

# WINDSIM SOFTWARE

## (WINDSIM ACCELERATOR AND DESKTOP)

### STANDARD TERMS

Last updated: 27 August 2024

#### **PART A - GENERAL TERMS**

##### **1 THE AGREEMENT DOCUMENTS**

These Standard Terms are divided into three parts:

- Part A - General Terms
- Part B - Cloud terms
- Part C - License terms

(collectively the "**Standard Terms**")

Part A applies irrespective of which products and services the Customer has purchased/subscribed to. Part B applies if the Customer subscribes to the Cloud Services and Part C applies if the Customer has purchased a License. The Subscription Form indicates whether Part B, Part C or both are applicable to the Customer.

In addition to the Standard Terms, the Agreement consists of the following documents:

- The signed Subscription Form
- Appendix 1: Solution description, which is accessible at [WindSim Accelerator Product Fact Sheet](#)
- Appendix 2: Service Level Agreement for the Cloud Service (SLA).
- Appendix 3: Data Processing Agreement (DPA).

The contract documents can be changed at any time, without prior notice.

In the event of a conflict between the documents forming part of the Agreement, the documents shall take precedence in the following order:

- The signed Subscription Form
- The Standard Terms
- Appendix 1
- Appendix 2

- Appendix 3

##### **2 DEFINITIONS**

Capitalized terms shall have the meaning assigned to them in this clause 2 or, when written in bold between quotation marks, in other documents forming part of the Agreement.

"Agreement" means the Subscription Form, the Standard Terms and the documents listed in clause 1.

"Credit" shall have the meaning assigned to it in the Subscription Form.

"Customer Data" means all data created by the Customer by using the Cloud Service or the License.

"Cloud Service" means the services delivered as software as a service solution as further described in Appendix 1.

"Customer" means the legal entity identified as the Customer in the Subscription Form.

"License" means a license allowing the Customer to install the latest available version of the WindSim software locally on its computer/network. .

"Parties" means WindSim and the Customer.

"Service" means all of WindSim's deliverables to the Customer, including the Cloud Service and the License.

"Standard Terms" shall have the meaning assigned to it in clause 1.

"Subscription Form" means the document signed by WindSim and the Customer.

"Users" means the Customer's employees that are given access to the Service.

"WindSim" means WindSim AS, with company registration number 967 070 513, unless a different affiliate is identified in the Subscription Form.

### **3 WINDSIM OBLIGATIONS**

WindSim will deliver the Services specified in the Subscription Form in accordance with the terms of this Agreement.

### **4 THE CUSTOMER'S OBLIGATION**

The Customer shall provide WindSim with such information it requires to provide the Service to the Customer and to validate and verify that the Customer complies with the terms of the Agreement.

The Customer assumes the risk of the use, quality, performance, accuracy and completeness of any data produced by the Service.

### **5 SUPPORT**

WindSim will provide support as described in Service Level Agreement (SLA). The Customer will provide access to the necessary resources for WindSim to be able to support the Customer in a timely manner.

### **6 SECURITY MEASURES**

WindSim has implemented and shall during the term of the Agreement maintain appropriate technical and organizational measures, internal controls, and information security routines. WindSim may during the term of the Agreement change and/or update the measures as desired, provided that such changes shall not materially decrease the overall security of the Cloud Service.

### **7 USERS**

The Customer may enrol Users on an as need basis by using the self-service solution. All Users shall be employed by or working under the instruction of the Customer.

The Customer shall ensure that the Users ensures that the Users comply with the terms of this Agreement.

### **8 PROCESSING OF PERSONAL DATA**

WindSim shall process Customer personal data only as permitted under this Agreement. The data processing agreement set out in Appendix 3 reflects the Parties' agreement with respect to WindSim's processing of personal data.

### **9 FEES, INVOICING AND PAYMENT TERMS**

The fees payable for the Service are set forth in the Subscription Form/quote document. The fees payable may be adjusted by WindSim without prior notice.

WindSim will issue invoices for Cloud Service and the License in advance. Other fees will be invoiced at any time during the term when fees are payable. The Customer shall, unless otherwise stated in the Subscription Form, pay all invoices within 30 (thirty) days of the invoice date.

WindSim may claim late payment interest of 2% monthly if an invoice is more than 30 (thirty) days overdue. Interest shall be calculated from the due date until payment is made.

The fees do not include any taxes, levies, duties, value added tax or other tax applicable to the sale of the Service. Such taxes, when applicable, shall be paid by Customer unless Customer provides proof of tax exemption.

### **10 SUBCONTRACTING**

WindSim may use subcontractors in the provision of the Service. WindSim shall be liable for the acts and omissions of its subcontractors and any other affiliates contributing to the performance of its obligations under this Agreement as for its own actions or omission.

### **11 INTELLECTUAL PROPERTY RIGHTS**

This Agreement does not constitute any transfer of ownership of any intellectual property rights. WindSim owns and shall always retain all right, title, and interest in and to the Service and all intellectual property rights associated therewith.

## 12 CUSTOMER DATA

Customer Data is and shall remain the exclusive property of Customer and Customer has sole responsibility for the content of and the right to use Customer Data.

The Customer hereby grants to WindSim, during the term of this Agreement, a limited right to access and use such Customer Data that are necessary for WindSim to provide and improve the Service. WindSim will use Customer Data only as necessary to provide the Service to the Customer or to improve the Service.

WindSim will not sell, rent, or lease Customer Data to any third party or otherwise receive any value in exchange for Customer Data.

## 13 CONFIDENTIALITY

Information that comes into the possession of the Parties in connection with the Agreement, shall be kept confidential and shall not be disclosed to any third party without the consent of the other Party.

This foregoing shall not apply to:

- (a) information that is already known to the receiving Party at the time the information was received;
- (b) information that is or becomes part of the public domain other than through a fault of a Party; or
- (c) information that is rightfully received from a third party, without an obligation of confidentiality.

The confidentiality obligation pursuant to this provision shall not prevent the disclosure of information if such disclosure is demanded pursuant to laws or regulations. The other Party shall, if possible, be notified prior to the disclosure of such information.

Further, confidential information may be disclosed by either Party to its contractors, advisors, employees or the like who need to know of such information. Such disclosure shall always

be contingent on the relevant Party or person having signed a confidentiality agreement on no less stringent terms than those set forth herein.

## 14 WINDSIM'S BREACH OF CONTRACT

WindSim does not warrant that the Services are free of defects. WindSim's obligations and liability in respect of defects in the Cloud Service are set forth in Part B and WindSim's obligations and liability in respect of the License are set forth in Part C.

WindSim shall under no circumstance be liable for any damage or loss to property or personnel as a result of the use of the Service. The Customer agrees to defend, indemnify and hold WindSim and affiliated companies of WindSim harmless from any such loss or damage.

WindSim's total liability under this Agreement shall be limited to the annual fee payable by the Customer in accordance with the Subscription Form.

## 15 THE CUSTOMER'S BREACH OF CONTRACT

The Customer is liable for any losses which WindSim incur as a result of the Customer's breach of the Agreement.

## 16 CONSEQUENTIAL OR INDIRECT LOSSES

Notwithstanding anything to the contrary in the Agreement, neither Party shall be liable to the other Party for any consequential or indirect losses or damages whatsoever, howsoever. This applies irrespective of whether such consequential or indirect losses were foreseeable at the effective date of the Agreement. Both Parties agree to defend, indemnify and hold the other Party harmless for any such losses and damages.

## 17 SUSPENSION

WindSim may suspend the Agreement if an undisputed overdue invoice remains unpaid 14

days after the Customer has received a notice of non-payment from WindSim.

## **18 TERMINATION**

Either Party may terminate the Agreement if:

- (a) either Party is in material breach of the terms of the Agreement and has failed to remedy the breach within a reasonable period, which as a minimum shall be 21 days, of being notified of the material breach of the terms of the Agreement;
- (b) an undisputed overdue invoice remains unpaid 14 days after the defaulting Party having received a notice of non-payment from the other Party;
- (c) either Party commences debt rescheduling proceedings, composition with creditors, bankruptcy, or any other form of creditor intervention, in respect of its business without any prior notice of termination being required.

In addition, either Party may terminate the Agreement for convenience by giving 14 days' notice.

## **19 FORCE MAJEURE**

If an occurrence beyond the control of the Party prevents the affected Party from fulfilling its obligations under the Agreement and such occurrence could not reasonably have been foreseen at the effective date of the Agreement, and the occurrence or the consequences thereof could not reasonably have been overcome or avoided, the relevant Party shall not be considered in breach of the Agreement.

The Party affected by a force majeure event shall immediately notify the other.

If a force majeure event continues for more than 90 days, the non-affected Party may terminate the Agreement by giving 10 days' notice. Such right to terminate shall be contingent on the work not reassuming in the notice period.

## **20 GOVERNING LAW AND DISPUTE RESOLUTION**

This Agreement shall be governed by the laws of Norway.

The Parties shall endeavor to resolve any dispute or controversy arising out of or under this Agreement in an amicable manner. If the Parties are unable to resolve a dispute amicably, the dispute shall be referred to Oslo District Court for resolution.

## **PART B - CLOUD TERMS**

### **21 RIGHT TO ACCESS AND USE THE CLOUD SERVICE**

For as long as the Customer pays for the Cloud Service or until the Agreement is terminated, WindSim grants the Customer a non-exclusive, worldwide, time-limited, non-transferable, non-sublicensable right to access and use the Cloud Service. The right to access and use the Cloud Service does not include a right to modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish or copy any part of the Cloud Service. Initial access will be granted upon receipt of payment.

### **22 CREDIT USE AND CHANGING PLANS**

Any remaining, unused credits at the end of the contractual term (booster, monthly, annual, tri-annual) are non-transferable and will expire at the end of the contractual period.

Plans can be upgraded or downgraded with 14 days' notice as set forth in clause 18. When changing a plan prior to expiration, a new equal length contract will be entered into, and pro-rated value of remaining credits of the previous contract will be subtracted from the following contract payment in case of downgrading. No refunds will be payable. Downgrading is possible for Plus, Premium and Select plans and can be done during the first 6 months of the duration of an annual contract and the transfer of remaining credit value is limited to the following contract period only.

Booster plans are valid for 30 days.

### **23 WINDSIM'S RESPONSIBILITY FOR THE CLOUD SERVICE**

WindSim is responsible for ensuring that the Cloud Service fulfils all functions described in Appendix 1. WindSim seeks to constantly improve the Cloud Service and may, therefore, at its sole discretion, update, change and alter the Cloud Service, including its functionality.

The service levels applicable to Cloud Service are set forth in Appendix 2. For the Cloud Service, WindSim's liability for defects is solely and exclusively limited to the remedies described in Appendix 2.

WindSim may not discontinue the Cloud Service without giving the Customer six months' written notice.

## **PART C - LICENSE TERMS**

### **24 RIGHT TO INSTALL AND USE THE LICENSE**

On the date the quote for the License is signed, WindSim grants the Customer a non-exclusive, non-transferable, worldwide, perpetual right to use the latest version of the WindSim software that has been made available by WindSim to the Customer in accordance with this Part C.

The License right does not include a right to modify, make derivate works of, disassemble, decompile, reverse engineer, reproduce, republish or copy any part of the WindSim Software.

The License is sold on "as-is" basis, entailing that WindSim offers no guarantees in respect of the License other than that the WindSim software functions as specified in Appendix 1 at the date of delivery. If a defect occurs for which WindSim is responsible, it will without undue delay remedy the defect. WindSim shall not be liable towards the Customer for any such defects.

If the Customer purchases the cloud service, access to an restricted version of the Software is included in the subscription.

### **25 SUPPORT AND MAINTENANCE**

For as long as the Customer pays the annual Support and Maintenance Fee, WindSim will make available to the Customer the at any time latest version of the WindSim Software on the terms outlined in clause 24. Customer support is included.

#### **Support**

Support is provided on current version (N), and on previous version (N-1), for a period of 12 months after current version is released. WindSim 12, which is the current version, was released in April 2023. The support service covers assistance with technical issues and inquiries related to the installation, configuration, and use of the desktop software. Project-related support is considered a consultancy service.

#### **Maintenance**

Fixes and patches are delivered on the current version.

If the cloud-based service is purchased and in use next to desktop software, both versions will be covered by support and maintenance in line with the following schedule;

- Starter Plan: 1 support and maintenance contract covered
- Light Plan: up to 2 support and maintenance contracts covered
- Plus Plan: up to 3 support and maintenance contracts covered
- Premium Plan: up to 6 support and maintenance contracts covered

